

### **523I.309 Interment, relocation, or disinterment of remains.**

1. Any available member of the following classes of persons, in the priority listed, shall have the right to control the interment, relocation, or disinterment of a decedent's remains within or from a cemetery:

*a.* The surviving spouse of the decedent, if not legally separated from the decedent.

*b.* The decedent's surviving adult children. If there is more than one surviving adult child, any adult child who can confirm, in writing, that all other adult children have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation, or disinterment, unless the cemetery receives an objection to such action from another adult child of the decedent. Alternatively, a majority of the surviving adult children of the decedent whose whereabouts are reasonably ascertainable shall have such right to control.

*c.* The surviving parents of the decedent whose whereabouts are reasonably ascertainable.

*d.* A surviving adult grandchild of the decedent. If there is more than one surviving adult grandchild, any adult grandchild who can confirm, in writing, that all other adult grandchildren have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation, or disinterment, unless the cemetery receives an objection to such action from another adult grandchild of the decedent. Alternatively, a majority of the surviving adult grandchildren of the decedent whose whereabouts are reasonably ascertainable shall have such right to control.

*e.* A surviving adult sibling of the decedent. If there is more than one surviving adult sibling, any adult sibling who can confirm, in writing, that all other adult siblings have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation, or disinterment, unless the cemetery receives an objection to such action from another adult sibling of the decedent. Alternatively, a majority of the surviving adult siblings of the decedent whose whereabouts are reasonably ascertainable shall have such right to control.

*f.* A surviving grandparent of the decedent. If there is more than one surviving grandparent, any grandparent who can confirm, in writing, that all other grandparents have been notified of the proposed interment, relocation, or disinterment may authorize the interment, relocation, or disinterment, unless the cemetery receives an objection to such action from another grandparent of the decedent. Alternatively, a majority of the surviving grandparents of the decedent whose whereabouts are reasonably ascertainable shall have such right to control.

*g.* An adult person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession.

*h.* The county medical examiner, if responsible for the decedent's remains.

A cemetery may await a court order before proceeding with the interment, relocation, or disinterment of a decedent's remains within or from a cemetery if the cemetery is aware of a dispute between an authorized person under this section and the executor named in the decedent's will or a personal representative appointed by a court, or is aware of a dispute among authorized persons with the same priority under this subsection.

2. A person who represents that the person knows the identity of a decedent and, in order to procure the interment, relocation, or disinterment of the decedent's remains, signs an order or statement, other than a death certificate, that warrants the identity of the decedent is liable for all damages that result, directly or indirectly, from that representation.

3. A person may provide written directions for the interment, relocation, or disinterment of the person's own

remains in a prepaid funeral or cemetery contract, or written instrument signed and acknowledged by the person. The directions may govern the inscription to be placed on a grave marker attached to any interment space in which the decedent had the right of interment at the time of death and in which interment space the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by the person. A person other than a decedent who is entitled to control the interment, relocation, or disinterment of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the interment, relocation, or disinterment is financially able to do so.

4. A cemetery shall not be liable for carrying out the written directions of a decedent or the directions of any person entitled to control the interment, relocation, or disinterment of the decedent's remains.

5. In the event of a dispute concerning the right to control the interment, relocation, or disinterment of a decedent's remains, the dispute may be resolved by a court of competent jurisdiction. A cemetery shall not be liable for refusing to accept the decedent's remains, relocate or disinter, inter or otherwise dispose of the decedent's remains, until the cemetery receives a court order or other suitable confirmation that the dispute has been resolved or settled.

6. *a.* If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owner and the person entitled by this section to control the interment, relocation, or disinterment of the decedent's remains.

*b.* If the consent required by this subsection cannot be obtained, the remains may be relocated by permission of the district court of the county in which the cemetery is located. Before the date of application to the court for permission to relocate remains under this subsection, notice must be given to the cemetery in which the remains are interred, each person whose consent is required for relocation of the remains under subsection 1, and any other person that the court requires to be served.

*c.* For the purposes of this subsection, personal notice must be given not later than the eleventh day before the date of application to the court for permission to relocate or disinter the remains, or notice by certified mail or restricted certified mail must be given not later than the sixteenth day before the date of application.

*d.* This subsection does not apply to the removal of remains from one interment space to another interment space in the same cemetery to correct an error, or relocation of the remains by the cemetery from an interment space for which the purchase price is past due and unpaid, to another suitable interment space.

7. A person who removes remains from a cemetery shall keep a record of the removal, and provide a copy to the cemetery, that includes all of the following:

*a.* The date the remains are removed.

*b.* The name of the decedent and age at death if those facts can be conveniently obtained.

*c.* The place to which the remains are removed.

*d.* The name of the cemetery and the location of the interment space from which the remains are removed.

8. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the

location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

9. Relocations and disinterments of human remains shall be done in compliance with sections 144.32 and 144.34.

2005 Acts, ch 128, §31; 2006 Acts, ch 1117, §121